

REMARKS

Withdrawal of Appeal and Reopening Prosecution

A Notice of Appeal has been previously filed on March 28, 2007 together with a petition for one-month extension of time, in response to the final claim rejections in the November 30, 2006 Office Action. However, in order to expedite this proceeding and allow the present application to issue into a patent at an earlier date, Applicants hereby withdraw the present application from appeal and reopen prosecution of the application by amending the claims to overcome the final rejections raised in the November 30, 2006 Office Action and filing a Request for Continued Examination (RCE) under 37 C.F.R. §1.114, together with a petition for two-month extension of time.

Response to the §102 Rejection

In the November 30, 2006 Office Action, the Examiner reiterated and finalized previous rejections against claims 1-3, 6-12 and 15-18 under 35 U.S.C. §102(b) as allegedly anticipated by Japanese Patent Application Publication Number 02-204407 filed by Kanebo Ltd (hereinafter “Kanebo”) as evidenced by Japanese Patent Application Publication Number 03-213574 filed by Ajinomoto KK (hereinafter “Ajinomoto”).

In response, Applicants have hereby cancelled claims 5 and 14 and amended claims 1 and 10, from which claims 2-4, 6-9, 11-13, and 15-18 depend respectively, to recite a method of retaining or enhancing curl in human eyelashes by applying to the human eyelashes a composition containing a transglutaminase in an amount of from about 0.004 wt% to about 0.025 wt%. Support for such claim amendments can be found throughout the instant specification as

originally filed at, for example, page 1, lines 3-4; page 2, lines 3-4; page 3, lines 14-15 and 25-26; page 4, lines 13-14 and 21-27; and pages 6-7, Formula C for Lash Curling Gel. Further, Applicants hereby submit a Declaration under 37 C.F.R. §1.132 (“the Rule 132 Declaration”), which clearly shows the effectiveness of a transglutaminase-containing composition of the present invention in curling human eyelashes.

It is important to note that the amended claims of the present application are directed to new methods of use, specifically the use of a transglutaminase-containing composition for retaining or enhancing curl in human eyelashes. Specifically, such new methods of use comprise the step of “applying [the composition] to human eyelashes”, as positively recited by the amended claims 1-4, 6-13 and 15-18 of the present application.

In contrast, Kanebo discloses the use of hair cosmetic compositions containing a transglutaminase and a water-soluble polyhydric alcohol to treat damaged hair, i.e., hair that is frequently permed, dried, or washed, for improving the surface structure of the damaged hair and making the hair glossier, softer, and springier. Specifically, Kanebo formulated the transglutaminase and the water-soluble polyhydric alcohol into various hair treatment products, such as hair tonics, hair creams, and hair rinses (see the English Translation of Kanebo, Application Examples 1-5), and such hair treatment products were tested on damaged hair strands (i.e., commercial tresses that were shampooed, cleaned, and from which sebum was extracted with acetone) for their smoothing and shining effects as well as on hair of expert panelists for their impact on hair smoothness, moisturization, elasticity and flexibility (see the English Translation of Kanebo, Testing Examples on pages 4-5). However, nothing in Kanebo teaches, suggests, or even contemplates the use of such transglutaminase-containing hair cosmetic compositions on eyelashes, much less the use of such hair cosmetic compositions

for retaining or enhancing curl in human eyelashes, as positively recited by the amended claims 1-4, 6-13 and 15-18 of the present application.

Ajinomoto discloses the use of transglutaminase in improving the shrinkage resistance, anti-pilling property, and hydrophobic property of animal wool fiber (see the English translation of Ajinomoto, page 3, first and last paragraphs). However, Ajinomoto is completely deficient in disclosing use of transglutaminase on human eyelashes, much less use of transglutaminase for retaining or enhancing curls in human eyelashes. Therefore, Ajinomoto cannot remedy the deficiency of Kanebo.

Based on the foregoing, Applicants hereby request the Examiner to withdraw the §102 rejections of claims 1-4, 6-13 and 15-18.

Response to the §103 Rejections

In the November 30, 2006 Office Action, the Examiner rejected claims 1-4, 6-13 and 15-18 under 35 U.S.C. §103 as allegedly obvious over Kanebo in view of Ajinomoto and further in view of Dane, Hair Chemistry 1, the Trichological Society, www.hairscientists.org/hair-chemistry.htm, ©2000, printed from the Internet on July 26, 2004 (hereinafter “Dane”) and BRENDA, http://www.brenda.uni-koeln.de/php/result_flat.php4?ecno=2.3.2.13, printed from the Internet on July 26, 2004 (hereinafter “Brenda”). Further, the Examiner rejected claims 5 and 14 under 35 U.S.C. §103 as allegedly obvious over Kanebo in view of Ajinomoto, Dane, Brenda and further in view of the product literature for eyelash perms from E-Z Permanent Makeup available at <http://www.eyelashperm.com> and <http://www.ezpermanentmakeup.com>, printed from the Internet on July 26, 2004 (hereinafter “E-Z Permanent Makeup”).

As explained hereinabove, both Kanebo and Ajinomoto fail to disclose a method of using transglutaminase for retaining or enhancing curls in human eyelashes, which is positively recited by the amended claims 1-4, 6-13 and 15-18 of the present application.

Dane only discloses use of conventional perm agents for disrupting existing disulfide bonds in the keratin fibers of hair and forming new disulfide bonds therein to creating curls and waves in hair. Nothing in Dane teaches or suggests the use of transglutaminase, let alone the application of transglutaminase to human eyelashes.

The applied disclosure of the Brenda reference is limited to a human transglutaminase having a pH optimum of 6. However, Brenda does not teach or suggest any specific usage of the human transglutaminase, much less the use of the human transglutaminase for curling human eyelashes. Therefore, Brenda cannot remedy the above-described deficiency of Kanebo, Ajinomoto, and Dane.

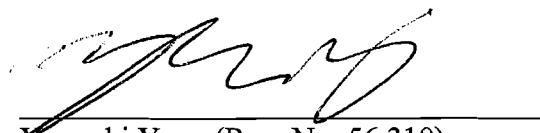
The applied disclosure of E-Z Permanent Makeup is limited to conventional perming agents and the application thereof to eyelashes. Similar to Dane, nothing in E-Z Permanent Makeup teaches or suggests the use of transglutaminase, let alone the use of transglutaminase for curling human eyelashes. Therefore, E-Z Permanent Makeup cannot remedy the deficiency of Kanebo, Ajinomoto, Dane, and Brenda.

Correspondingly, Applicants request the Examiner to reconsider, and upon reconsideration to withdraw, the §103 rejections of claims 1-4, 6-13 and 15-18.

In view of the foregoing amendments and remark, it is believed that all pending claims 1-4, 6-13 and 15-18 as amended herein are patentably distinguished over the cited references and are in condition for allowance. The Examiner is therefore requested to issue a Notice of Allowance in Applicants' favor. If there is any issue requiring further resolution, the Examiner

is requested to contact the undersigned attorney to discuss same, in order that this application can be passed to issue at an early date.

Respectfully submitted,



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